

- Encl.*
- a) a post mounted in said posterior wall and extending to near an interior end of said implant; and
 - b) an anterior expansion member coupled to said post and adapted to operably expand an anterior spacing between said upper and lower walls, as said expansion member moves posteriorly along said post during installation.

41. The implant according to Claim 40 including:

- a) a fastener for positioning said expansion member relative to said post and securing said expansion member to said post.

REMARKS:

The Office action mailed August 1, 2001 and March 28, 2002 have been received and carefully considered. Reconsideration of the application as amended hereby is respectfully requested. The amendment filed October 31, 2001 was inadvertently directed to the wrong elected species, as it had been intended to cover the species of Figs. 15 to 17 with original Claims 14 to 17. Because the examiner withdrew these claims, it was incorrectly believed another species had been elected and the amendment directed to it.

To try to overcome these problems, Claims 14 to 17 have been rewritten as Claims 33 to 36 and are believed to be clearly

directed to the embodiment shown in Figs. 15 to 17. In particular, the claims call for an implant cover 204 having upper and lower support surfaces 253 and 254 (see Fig. 15) which engage and support an anterior region of adjacent vertebrae, as is shown in Fig. 17. Nothing in the prior art of record is believed to show such a structure. Claim 37 is a Jepson format type claim emphasizing the implant end cover discussed in the previous paragraph and is urged to be allowable along with Claims 38 and 39 which depend from it.

Claims 31 and 32 are directed to subject matter that was previously found in part in original Claims 12 and 13. These claims are specifically directed to a fusion cage having a post or stud 223, as is shown in Figs. 15 to 17 that extends through an implant and upon which is mounted an anterior expansion cap. Original Claim 12 was rejected as anticipated by Koros, et al. and Pisharodi.

While Pisharodi shows an expandable device of sorts, it expands centrally as opposed to anteriorly and fails to teach the use of an expansion member to expand the device anteriorly. It is not seen that the Pisharodi device in any way suggests modification or combination with other cited prior art to teach the claimed structure of Claim 31.

Further, although Koros shows a screw with a wedge shaped head, it also is not believed to teach the invention as called

for in Claim 31. In particular, the screw of Koros is threadably received in a second wedge head so that the two heads bias apart the upper and lower walls of the device as the screw is advanced. Applicant's device calls for a post mounted in a rear wall of the implant and an expansion member coupled with the post to urge expansion of the anterior end of the implant as the expansion member is advanced on the post. Nothing is found in Koros or Pisharodi to teach this.


New Claim 40 is urged to claim this subject matter more specifically and is also believed to distinguish over the cited art, along with Claim 41 that depends from it.

In summary, it is urged that Claim 31 to 41 distinguish over the art of record and notice to that effect is earnestly requested.

The Examiner is invited to contact the undersigned by telephone, if prosecution of this application can be expedited thereby.

Respectfully Submitted,

JCM:lm
PO Box 30069
Kansas City, Missouri
64112
Phone: (816) 531-3470

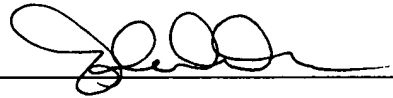


John C. McMahon
Reg. No. 29,415
Attorney

I hereby certify that this
correspondence is being deposited
with the United States Postal
Service as first class mail in an
envelope addressed to: Assistant
Commissioner For Patents,
Washington, D.C. 20231 on
April 24, 2002.

Roger P. Jackson
(Applicant)

By



April 24, 2002

(Date of Signature)